

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT WHARTON	:	CIVIL ACTION
	:	
Petitioner	:	No. 2:01-cv-06049-MSG
	:	
v.	:	CAPITAL CASE
	:	
TAMMY FERGUSON,	:	
Superintendent,	:	
	:	
Respondent	:	

JOINT STATUS REPORT

AND NOW, come Petitioner Robert Wharton, Respondent Tammy Ferguson, and *amicus curiae* the Pennsylvania Office of Attorney General (OAG), through undersigned counsel, and file this Joint Status Report and, in support thereof, represent as follows:

Consistent with the Court's Order of May 1, 2020, the parties and OAG have communicated regarding the matters identified by the Court. The results of those discussions are as follows:

1. Evidentiary Record

The parties and OAG agree that we should have an in-court hearing with live testimony. The limitations of video testimony or videoconferencing will make it

nearly impossible to create a proper record. Moreover, Mr. Wharton wishes to be present for the hearing.

2. Stipulations

The parties and OAG agree to stipulate to the authenticity, but not the admissibility, of identified documents. At this time, the District Attorney's Office and OAG have indicated that they will not stipulate to any declaration, affidavit, etc., of an expert witness. They wish to have all experts testify at the hearing and be subject to cross-examination. Any objections to specific testimony or aspects of testimony by experts also are preserved. If a party or OAG identify a document or other exhibit as to which there is an objection to authenticity, the objection will be raised in a timely manner in advance of the hearing.

3. Witness and Exhibit Lists

Counsel for Wharton and OAG have provided witness lists and exhibit lists, subject to supplementation. Additions or changes to those lists will be provided in a timely fashion. The District Attorney's Office does not intend to call witnesses or introduce exhibits but reserves the right to do so depending on the evidence presented at the hearing. Counsel for Wharton and OAG have outstanding requests for documents from the District Attorney's Office, which has indicated that the documents will be made available once the District Attorney's Office has reopened. As noted, the parties and OAG reserve the right to object to witnesses

and exhibits apart from the stipulation on authenticity. Each party and OAG will be responsible for making arrangements for the transportation of their own out-of-state witnesses and, if necessary, with the United States Marshals Service once a date is set for a hearing.

4. Other Issues

OAG is of the view that prehearing motions are necessary to resolve a number of issues without delaying or interrupting the hearing for objections and argument. For example, Wharton indicated in a prior brief that evidence of his attempted escape is irrelevant as outside the scope of his claim. Identifying and presenting such issues to the Court in advance via motions in limine would allow the evidence to be presented in an orderly fashion. The parties and OAG agree that such motions in limine should be filed by a specific date, such as 30 or 45 days before the date on which the hearing is scheduled.

The parties and OAG request that, once the Court has dates available for an evidentiary hearing, the Court convene a status conference to determine the availability of counsel for the parties and OAG, and the availability of witnesses.

The foregoing represents the material aspects of the discussions among the parties and OAG pursuant to the Court's Order of May 1, 2020.

/s/ Claudia Van Wyk

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Claudia Van Wyk, Esquire
Elizabeth McHugh, Esquire
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Capital Habeas Corpus Unit

/s/ Paul M. George

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James P. Barker, Esquire
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Pennsylvania Office of Attorney General

Date: June 30, 2020

CERTIFICATE OF SERVICE

I hereby certify that, as the filer and on this date, I caused the foregoing Joint Status Report to be served on the following persons via email through the Court's Electronic Case Filing (ECF) system:

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Date: June 30, 2020